



Excise Tax Advisory

Excise Tax Advisories (ETAs) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

Number: 2009-3S.32

Issue Date: May 25, 2005

BTA Nonacquiescence

The Board of Tax Appeals (the BTA), a separate agency from the Department of Revenue, decides both formal and informal administrative appeals from determinations made by the Department of Revenue. BTA decisions bind the Department only for the individual taxpayer's case and for the time period under appeal. BTA decisions in informal cases, by law, cannot be appealed by the Department.

All BTA decisions are available to the public. The Department does not always agree with adverse BTA decisions. In some cases the Department needs to inform the public, tax practitioners, and the Department's employees that it disagrees with an adverse BTA decision. The Department has decided to issue these statements via an ETA or ETA supplement to avoid misunderstandings about how the Department will apply these BTA decisions to other taxpayers' situations.

Any statement issued about a BTA decision may be withdrawn or modified at any time. The lack of a statement issued by the Department about any BTA decision has no meaning. It neither implies agreement or disagreement with a BTA decision.

This advisory is the third supplement to ETA 2009 and announces the Department's nonacquiescence to one BTA decision. ETA 2009 and its supplements should not be discarded as these documents provide a history of all Department statements of nonacquiescence regarding adverse BTA decisions through an ETA or ETA supplement.

Columbia Ready-Mix

The Department of Revenue does not acquiesce in the Board of Tax Appeals' decision in *Columbia Ready-Mix*, Docket No. 58759 (issued 6/22/04). *Columbia Ready-Mix* involved the production of asphalt using diesel fuel to supply heat. When diesel fuel is burned a small amount of ash is created and Columbia Ready-Mix disposed of this ash by allowing it to remain in the asphalt mixture or by adding it to blend sand, which was used in future asphalt batches. The Board held because the ash was included in the final product, it was an ingredient of asphalt and therefore purchases of diesel fuel were exempt from retail sales tax.

The Department of Revenue will not follow the Board's holding that purchases of diesel fuel, which is used to supply heat, is an ingredient in asphalt. We reach this conclusion because:

To inquire about the availability of this document in an alternate format for the visually impaired, please call 705-6715. Teletype (TTY) users may call 1-800-451-7985.

1. Diesel fuel ash is not a necessary ingredient of asphalt.
2. Diesel fuel ash was not found by the BTA to affect the strength, setting time, or any other characteristic of asphalt.
3. Asphalt can be made without diesel fuel ash.
